Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

No.____

In re: HAL TAYLOR,

Debtor.

STEPHEN W. RUPP, TRUSTEE,

Petitioner,

v.

JULIA TAYLOR,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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91 pp

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Tenth Circuit went beyond the limits and abused the powers of appellate review.

Whether the United States Court of Appeals for the Tenth Circuit erred as a matter of law in concluding that the determination of equitable property interests is a conclusion of law rather than an issue of fact.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the court below were: Stephen W. Rupp, Trustee of the bankruptcy estate of Hal Taylor; and Julia Taylor, Mr. Hal Taylor's non-debtor spouse.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED . . . . . (i)
PARTIES TO THE PROCEEDINGS . . . . . (ii)
TABLE OF CONTENTS . . . . . (iii)
TABLE OF AUTHORITIES . . . . . (v)
OPINIONS BELOW 2
JURISDICTION 2
STATUTES INVOLVED 2
RULES INVOLVED 3

STATEMENT 3
Introduction 3
Background 4

ARGUMENT/REASONS FOR GRANTING THE WRIT 7

I. THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN ORDER TO REVIEW AND REVERSE THE LOWER COURTS' RULINGS 7

II. THE COURT OF APPEALS WENT BEYOND THE LIMITS AND ABUSED THE POWERS OF APPELLATE REVIEW. 9

Introduction 9

(A) The Court of Appeals Introduced and Found Facts Not at Issue and Concerning Which No Evidence Was Ever Presented. 10

(B) The Court of Appeals Overlooked and Underweighed Findings of the Trial Court 11

(1) The Opinion Ignores the Finding of Marital Property 11

(2) The Court of Appeals Has Ignored Findings That Constituted "Badges" of Ownership 13

(3) The Court of Appeals Underweighed The Indicia of Ownership 15

(4) The Opinion Has Leapfrogged The Declaration of Equitable Interest 17

(5) The Court of Appeals Misapprehends the Policy at Stake in this Case. 18

(C) The Court of Appeals Denied The Trustee Due Process By Considering Issues Of Law or Fact Not Presented or Supported On Appeal 19

(D) The Court of Appeals Violated Fundamental Rules of Appellate Review 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page

A. CASES

Dunn v. Dunn, 802 P.2d 1314, 1318, 1323 (Utah App. 1990) 12

Enrody v. Endrody, 914 P.2d 1166 (Utah App. 1996) 17

In re Granada, 92 B.R. 501 (Bankr. D.Utah 1988) . . 16

Hoagland v. Hoagland, 852 P.2d 1025 (Utah App. 1993) 12

Hogue v. Hogue, 831 P.2d 120 (Utah App. 1992) . . 12

In re Howard, 55 B.R. 580, 584 (Bankr. E.D. No. Car. 1985) 15

Jackson v. Virginia, 443 U.S. 307, 319 (1979) 21

Jobin v. McKay, (In re M & L Business Machine Co., Inc.), 84 F. 3d 1330, 1338 (10th Cir. 1996) 8

Leach v. Anderson, 535 P.2d 1241 (Utah 1975) 18

Maxwell v. Maxwell, 754 P.2d 84, 86-87, (Utah App. 1990) 12

Patel v. Rupp, 195 B.R. 779 (D.Utah 1996) 16

United States v. Davis, 60 F.3d 1479, 1481 (10th Cir. 1995 21

Workman v. Workman, 652 P.2d 931 (Utah, 1982) . 12

B. STATUTES AND RULES

11 U.S.C. §541 2,3
Federal Rule of Civil Procedure 52(a) 3,20
Federal Rule of Bankruptcy Procedure 8013 3
U.C.A. §25-6-5(2) 15,16-17

C. MISCELLANEOUS

Black's Law Dictionary, p. 632 (1968) 7

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PETITION FOR A WRIT OF CERTIORARI

Stephen W. Rupp, Trustee, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (App.1a) is reported at 133 F.3d 1336 (10th Cir. 1998). The Order denying the Petitioner's request for rehearing is unreported. (App.17a). The memorandum decision of the United States District Court for the District of Utah, Central Division, summarily affirming the judgment of the bankruptcy court is unreported (App.19a). The Findings of Fact and Conclusions of Law and Judgment of the United States Bankruptcy Court for the District of Utah, Central Division, (App. 21a and App. 56a) are unreported.

JURISDICTION

The Court of appeals entered its judgment on January 12, 1998. The petitioner filed a request for rehearing and suggestion for rehearing in banc on January 23, 1998. The order of the United States Court of Appeals for the Tenth Circuit (hereafter "Court of Appeals") denying the request and suggestion was filed February 20, 1998 (App.17a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) (1988).

STATUTES INVOLVED

Section 541 of the Bankruptcy Code, 11 U.S.C. § 541, provides in pertinent part,

> (a) The commencement of a case under...this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1)...[A]ll legal or equitable interests of the debtor in property as of the commencement of the case.

RULES INVOLVED

Federal Rule of Civil Procedure 52(a) and Federal Rule of Bankruptcy Procedure 8013 provide in pertinent part,

> Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

STATEMENT

Introduction

The bankruptcy estate includes all legal and equitable property interests of the debtor. Property interests are determine by state law. The issues concerning equitable property interests in the bankruptcy arena in the District of Utah are important, but still unsettled and not well defined due to the paucity of case law.

The underlying issue in this case is whether the debtor, Hal Taylor, has an equitable property interest in his home and residence of 21 years. Unfortunately, however, the overriding issue in this appeal has become the propriety of the

appellate review by the United States Court of Appeals for the Tenth Circuit, and its reversal of the U.s. Bankruptcy Court and the United States District Court. The petitioner seeks a determination that the Court of Appeals erred as a matter of law. More important, the petitioner asserts that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Background

In November, 1973, Hal Taylor (referred to by the Court of Appeals as "Harold") and Julia Taylor, husband and wife purchased their home in Park City, Utah. The title to the property was taken by the Taylors as joint tenants with the right of survivorship. (App. 26a).

Mr. Taylor was the primary income earner during the earlier years of the marriage. (App.23a, 26a). He has always been a source of income, through not always an income greater than his wife's in the last few years just prior to the filing of his bankruptcy petition. (App. 22a-26a).

At all times, the Taylors have treated their marriage as a financial partnership and considered income earned by either spouse as familial and partnership funds. The Taylors' incomes and receipts have been commingled. (App. 24a-26a).

Mr. Taylor is a real estate broker by profession. He has had a real estate business and real estate holders. Mr. Taylor is sophisticated and understands real estate transactions, including the nature of equitable, as opposed to legal, interests in property. (App. 22a, 25a).

Mr. Taylor had a heart attack in 1982. (App. 26a).

Mr. Taylor was sued in 1983. The suit resulted in judgment after a trial in July, 1986. The judgment was eventually satisfied. (App. 27a).

In May, 1985, Mr. Taylor transferred his title to the home to Julia Taylor. (App. 27a). Despite the transfer of title, Mr. and Mrs.. Taylors' care, use, enjoyment, possession, control and treatment of the property did not change. The Taylors treated the home as their joint property and their family home throughout their marriage. (App. 28a). There was also subsequent joint borrowing and repayment of a loan secured by the home for familial purposes. (App. 28a).

The Taylors stated no more reason or explanation for the transfer of the title than estate and inheritance tax planning. (App. 27a).

From 1986 to 1989, Mr. Taylor served as mayor of Park City, Utah. (App. 23a). Mr. Taylor suffered a stroke in 1989. (App. 24a).

On account of one judgment creditor, Mr. Taylor voluntarily filed a Chapter 7 bankruptcy on July 15, 1992. (App. 29a, 30a).

Just days before filing his bankruptcy petition, Mr. Taylor, contrary to a Utah State Court order, transferred, by trade-in, his joint interest in an unencumbered 1990 Jeep Wagoneer (App. 30a). The Taylors received a credit of $11,487.00 for the purchase of a 1993 Jeep Grand Cherokee. The title to the Grand Cherokee was placed solely in the name

of Julia Taylor. This transfer was undisclosed by Mr. Taylor in his bankruptcy. (App. 30a-32a).

Mr. Taylor disclosed virtually no assets upon filing. (App. 30a).

The Trustee contested Mr. Taylor's entitlement to a discharge in bankruptcy. After full prosecution of an adversary proceeding and full trial of the matter before the Honorable Judith A. Boulden, bankruptcy judge, District of Utah, Mr. Taylor was denied a discharge under § 727 of the Bankruptcy Code for willful and fraudulent omissions of material information from his bankruptcy statement of financial affairs and schedules. (App. 2a).

The Trustee subsequently commenced an adversary proceeding before the same bankruptcy judge against Julia Taylor to assert an equitable one-half property interest in the Taylors' home. After full prosecution and trial of the adversary proceeding, the bankruptcy judge declared that Mr. Taylor had an equitable one-half interest in the Park City home and imposed protective and remedial trusts. (App. 2a, 3a, 21a-50a).

Though Julia Taylor appealed the decision of the bankruptcy court and affirmation of U.S. District Court, she never included in the record on appeal to the Court of Appeals any of the evidence, oral or documentary, presented to the bankruptcy court. (App. 19a, 20A,10a).

Ms. Taylor appealed to the United States Court of Appeals for the Tenth Circuit. The Court of Appeals stated that the bankruptcy court's finding that Mr. Taylor retained an equitable one-half interest was not a question of fact, but

a legal conclusion that would be reviewed de novo. (App.10a). Even so, the Court of Appeals reversed the lower courts by finding that certain facts and circumstances of the case did not meet a clear and convincing standard of factual proof. (App. 11a-16a).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN ORDER TO REVIEW AND REVERSE THE LOWER COURTS' RULINGS

If the determination of equitable property interests is an issue of fact, the Court of Appeals was precluded from reversing the lower court's findings and declaration of an equitable interest since the appellant did not include for review in the record on appeal any of the oral or documentary evidence considered by the trial court.

In order to step around this otherwise dispositive defect of the appeal, the Court of Appeals misstates the rule of law, "we believe the bankruptcy judge's finding that Harold retained an equitable undivided one-half interest in the home is not a fact finding but a legal conclusion that we review de novo." (App. 10a). This is a misstatement of the law and in error for the following reasons:

1) The determination of equitable property interests is an issue of fact. The very essence of the term "equitable" necessitates the assessment of facts and circumstances. Though simplistic, *Black's Law Dictionary*, p. 632 (1968) defines "equitable" as, "Just, fair, and right, in consideration of the facts and circumstances of the individual case."

2) The Court of Appeals never explains what the issue or test of law is that would allow a court to legally conclude, apart from the facts, that Hal Taylor did or did not have an equitable interest. The Court of Appeals does state that the bankruptcy court cannot adopt a per se rule, but that statement begs the question, turning the issue against to one of fact. The petitioner contends that the lack of explanation is because the determination of whether one has an equitable interest in property is truly and wholly or primarily factual in nature.

3) In sole support of this statement of the law, the Court of Appeals relies on *Jobin v. McKay, (In re M & L Business Machine Co., Inc.)*, 84 F. 3d 1330, 1338 (10th Cir. 1996) which case had absolutely nothing to do with the issues and no similarity to the facts of the subject case. The Court of Appeals chose to quote only one sentence of *Jobin*:

> Resolution of this issue requires a determination of whether the facts satisfy the proper legal standard, a mixed question of law and fact. (App. 10a).

However, in full context, the *Jobir* opinion goes on to state, "In these circumstances, because the question of good faith is primarily factual, we will review the findings of the bankruptcy court for clear error." The Court of Appeals in the present case omitted both this sentence from its quote and such an evaluation. The Court of Appeals considers no more, refers to no other support for, and makes no further explanation of its conclusion. The Court of Appeals did not acknowledge any factual component in the determination of a equitable property interest. This conclusion, though in error, was reached by the Court of Appeals to justify and

permit its "review de novo" and reversal of the lower courts, a review which it could not have made had the issue been one of fact, since the appellant did not include in the record on appeal any of the evidence considered by the Bankruptcy Court.

II. THE COURT OF APPEALS WENT BEYOND THE LIMITS AND ABUSED THE POWERS OF APPELLATE REVIEW.

Introduction

The key issue in this case is whether Hal Taylor had an equitable property interest in his home. The whole case, including the imposition of the trust, turns on this issue. Since the evidence considered by the trial court was not of record on appeal, the Court of Appeals concluded it could review the case de novo because the finding and declaration of an equitable property interest was not an issue of fact but rather a conclusion of law. Despite this conclusion, the Court of Appeal's opinion moves on to raise and consider issues of, reweigh and introduce facts. Ultimately, the Court of Appeals reverses by finding that certain selected facts did not meet a clear and convincing standard of proof. If the key issue were truly one of law rather than an issue of fact, there would have been no need to consider facts or standards of proof. The very opinion belies its conclusion, correctness and result.

(A)

The Court of Appeals Introduced and Found Facts Not at Issue and Concerning Which No Evidence Was Ever Presented.

Not until review of the opinion, did it become evident that the Court of Appeals introduced, considered or found facts not at issue and concerning which no evidence had ever been presented.

The Court of Appeals was much more concerned with issues of estate and tax planning than the issues of the law and facts of the case. Matters of estate and inheritance tax planning, however, were never the subject of nor issues in this case or appeal.

Estate and inheritance tax planning was stated by the Taylors as the reason for the transfer of Mr. Taylor's title to the home. The preoccupation of the Court of Appeals with the irrelevant issues of estate and inheritance tax planning is evident in the opinion's statement, "As a practical matter such a rule would prevent transfers of title to the home between spouses to accomplish such objective as avoiding probate and arranging the two estates to take advantage of the estate and inheritance tax laws exemptions." (App. 12a, 13a). This statement is an unsupported finding of fact by the Court of Appeals concerning matters never placed at issue in this case and concerning which no evidence was ever presented.

The Court of Appeals also states this finding of fact, "but any financial institution loaning money on the security of a home would require a consent or guarantee by a spouse of the title holder because of the spousal elective share and

homestead exemptions law." (App. 15a). From the experience of the Trustee, not only is such a statement not true and dated, but again, there is no evidence nor issue of such matter ever presented.

The Court of Appeals inappropriately considered and found facts not at issue or concerning which no evidence was ever presented.

(B)

The Court of Appeals Overlooked and Underweighed Findings of the Trial Court

(1)

The Opinion Ignores the Finding of Marital Property

For an unexplained reason, the Court of Appeals overlooked findings by the trial court, which standing alone were dispositive of the issues in this case. The most important of these findings concerns marital property.

The Court of appeals quoted the bankruptcy court, "The Taylors treated the Park City Home as their joint marital property and their family home throughout their marriage, both before and after (Harold) transferred legal title to the property to (Julia)". (App. 9a). That quote is the first and last time the opinion mentions or considers the finding and conclusion by the trial court.

While Utah is not a community property state, it is a marital property and equitable division state. Marital

property interests in Utah are clear and have been well defined. "Marital property is ordinarily all property acquired during marriage and it 'encompasses all of the assets of every nature possessed by the parties, whenever obtained and from whatever source derived.'". Each spouse is presumed to have equal claim and ownership of the marital property. *Dunn v. Dunn*, 802 P.2d 1314, 1318, 1323 (Utah App. 1990) which also cites *Maxwell v. Maxwell*, 754 P.2d 84, 86-87, (Utah App. 1990) (absent special circumstances, property accumulated by the parties during the marriage should be equally divided.)

The Utah courts have considered spouses to be "partner[s] in the 'business' of marriage" and that all efforts or contributions to the marriage, whether income producing or not, justify and entitle each spouse to a fair share of the martial assets. *Dunn v. Dunn, supra* at p. 1318. The Utah Supreme Court has also stated:

> The state of title to marital property prior to divorce decree is not necessarily binding on the trial court in its distribution of such property pursuant to such decree. The trial court is empowered to make such distributions as are just and equitable, and may compel such conveyances as are necessary to that end. *Workman v. Workman*, 652 P.2d 931 (Utah, 1982).

The presumption of equal marital property interests survives even when title to the property has been previously and purposely transferred from one spouse to the other. See *Hoagland v. Hoagland*, 852 P.2d 1025 (Utah App. 1993) referring also to *Hogue v. Hogue*, 831 P.2d 120 (Utah App.

1992). In these cases, the husbands had transferred title to their wives to avoid creditors. Such reason is no more or less substantive than transferring title for estate and inheritance tax planning. Both are transfers of title for reasons or purposes besides actual transfer of the property. Furthermore, due to the fact that the Taylors' home was held in joint tenancy, the Court of Appeals admitted that the Taylors' purported reason for the transfer was not "a model of legal reasoning". (App. 12a).

The trial court found that the Taylors' home was marital, joint and family property in which Harold had a one-half interest, regardless of title, since the property was acquired during the marriage among all the other factors considered by the trial court. This finding is dispositive, yet the Court of appeals disregarded the finding.

(2)

The Court of Appeals Has Ignored Findings That Constituted "Badges" of Ownership

The appellate court found, "There were no 'badges of fraud' in this case". (App. 15a). Implicit in this finding, as improper as it might be, is that even though the case does not involve fraud, the Court of Appeals recognized that "badges of fraud" might also be "badges" or indicia of equitable ownership. In both cases, intent must be determined. Just as the courts well understand that a culpable party is not going to admit wrongful intent, neither will Mr. Taylor admit ownership in a liquidation bankruptcy case voluntarily filed by him for the purposes of defeating a judgment creditor which he vowed would never be paid. For this reason, the courts well recognize that intent can be proven by

circumstantial and extrinsic evidence. Thus, the consideration of "badges" or indicia of intent. (App. 4a).

In this case, the Court of Appeals overlooked, ignored, failed to recognize, or underweighed several "badges", including the following:

(I) The transferee and opposing owner of the home is Julia, Harold's wife, an insider.

(ii) The transfer to and opposing ownership of Julia is of substantially all the assets of Harold or Julia. Harold has or disclosed little else. Harold has virtually nothing.

(iii) Harold received no or inadequate consideration for the transfer to Julia.

(iv) Harold continued to pay debt secured by and taxes and insurance on the home.

(v) Harold transferred title to Julia after he had been sued or threatened with suit.

(vi) Harold retained possession, use, enjoyment, or control of the property transferred after the transfer.

(Compare U.C.A. § 25-6-5-(2) cited in the opinion f the Court of Appeals (App. 4a).)

Depending on the facts of a case, a finding of only one or more of such badges may be sufficient to prove the requisite intent (App. 4a). But the Court of Appeals failed to

acknowledge most or any of these badges of fraud or ownership.

(3)

The Court of Appeals Underweighed The Indicia of Ownership

The last above noted "badge" is considered in the opinion, but grossly underweighed by the Court of Appeals, notwithstanding that the weight of evidence is the domain of the trial court and beyond appellate review. The Court of Appeals underweighs this finding for the following reasons:

First, the opinion discounts the behavior of ownership. In any particular case, the owner's behavior prior to a transfer may be viewed to determine what behavior manifested ownership by that particular owner. If the owner's behavior does not change after an alleged transfer, the behavior should be considered to continue to manifest ownership despite the mere change of a name on a title. "If the debtor continues to use, enjoy and control the property transferred as if the property remained his own, then he retains a beneficial interest in the property." *In re Howard*, 55 B.R. 580, 584 (Bankr. E.D. No. Car. 1985).

Second, the badge of continued control and possession of property has particular significance and definition in Utah due to prior laws. Section 25-1-14 of the Utah Fraudulent Conveyance Act, repealed upon the adoption of the Uniform Fraudulent Transfer Act, in 1988, provided in pertinent part as follows:

> Every sale made by a seller of goods or chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by a delivery within a reasonable time, and is followed by an actual and continued change of the possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the seller or assignor, or subsequent purchasers in good faith. The word 'creditors' as used in this section shall be construed to include all persons who shall be creditors of a seller or assignor at anytime while such goods and chattels shall remain in his possession or under his control.

Though this statutory expression of this "badge" has been repealed with the adoption of the Utah Fraudulent Transfer Act, the substance of this section is still a badge of fraud and still statutorily implied in U.C.A. § 25-6-5(2)(b) of the Utah Fraudulent Transfer Act. ("(b) the debtor retained possession or control of the property transferred after the transfer.)

Under prior Utah law, continued possession or control of property was alone "conclusive evidence of fraud" against any party which became a creditor of the debtor while in possession or control of the property.

Third, under Utah law, possession is sufficient to give inquiry notice of a real property interest not of record. *Patel v. Rupp*, 195 B.R. 779 (D.Utah 1996), *In re Granada*, 92 B.R. 501 (Bankr. D.Utah 1988).

The trial court, after considering all the evidence, specifically found that the debtor's possession, control, use and enjoyment of the property was the same both before and after the alleged transfer. In Utah, this finding is alone sufficient to support the determination of an equitable interest.

(4)

The Opinion Has Leapfrogged The Declaration of Equitable Interest

By over-analyzing and narrowing its focus on the resulting and constructive trusts, the Court of Appeals avoided the true heart of this case which is whether the bankruptcy court properly declared an equitable interest in the Park City home. In this case, the impositions of the trusts are equitable remedies applied after a determination that a claim or cause is just. The imposition of the trusts is dependent on the finding that Hal Taylor had an equitable interest in his home. It is not whether the trusts apply that determines whether there is an equitable interest. The issue is whether there is an equitable interest that the trusts can be imposed to protect. *See, Enrody v. Enrody*, 914 P.2d 1166 (Utah App. 1996) (the court awarded Ms. Endrody an equitable share of her husband's beneficiary interest in a trust through the imposition of a constructive trust.) Even should a court determine that the impositions of the trusts are not appropriate remedies, and do not apply, such determination should have no bearing on the declaration of an equitable interest.

(5)

The Court of Appeals Misapprehends the Policy at Stake in this Case.

The status of legal title to property for estate and tax planning is not at issue in this case. The Policy at issue is the avoidance of creditors through the manipulation of legal title.

The Court of Appeals was overly concerned that affirming the bankruptcy court's decision would impair estate and tax planning, a matter that was never an issue in the case. There was no evidence of such impairment. Furthermore, what may not be factually sufficient for one purpose, may be legally for another. The sufficiency or jeopardy of an act lies of the context in which the circumstances are viewed. There is no evidence that retention of a beneficial or equitable ownership will jeopardize a transaction that can be accomplished by mere transfer of legal title.

On the other hand, there is the policy of preventing schemes or devices whereby a debtor can avoid his creditors and place his properties out of reach. That is the policy which is the subject of this case. The policy of Utah is to prevent a person from using a "device by which he can retain for himself and enjoy substantially all of the advantages of ownership and at the same time, place it beyond the legitimate claims of his creditors." *Leach v. Anderson*, 535 P.2d 1241 (Utah 1975). The Court of Appeals has sanctioned just such a device. There is no issue of fact but that Mr. Taylor controls, enjoys, uses and possesses the Park City home just as if he were the owner. There is no question that the home is joint marital property. While enjoying all the benefits of ownership, the Court of Appeals permits Mr. Taylor to place

the property beyond the reach of his creditors. This is not just. This is not good policy.

(C)

The Court of Appeals Denied The Trustee Due Process By Considering Issues of Law or Fact Not Presented or Supported on Appeal

As set forth in the arguments above, not until the Court of Appeals issued its opinion did the petitioner become aware of the Court of Appeals' agenda of issues of law and fact. The Trustee never had notice nor opportunity to address or respond to the new issues. When this was raised in the Trustee's motion for reconsideration, the motion was denied summarily without explanation. The opinion of the Court of Appeals raised for the first time the following issues:

1) Whether the determination of an equitable property interest is an issue of fact or a conclusion of law.

2) Whether the Bankruptcy Court was attempting to impose or adopt a per se rule.

3) Whether the finding of an equitable property interest of a debtor in bankruptcy would "prevent transfers of title to the home between spouses to accomplish such objectives as avoiding probate and arranging the two estates to take advantage of the estate and inheritance tax laws exemptions."

4) Whether financial institutions "loaning money on the security of a home would require a consent or guarantee by a spouse of the title holder because of

the spousal elective share and homestead exemptions law."

5) Whether the appellee would need to argue and rehabilitate facts and findings of the trial court since the appellant did not include in the record on appeal any of the oral or documentary evidence considered by the trial court.

As to each of these issues, the Court of Appeals became an unopposed advocate, witness, judge and jury. The issues were not raised nor supported on appeal by the appellant. The Trustee had no notice nor opportunity to respond.

(D)

The Court of Appeals Violated Fundamental Rules of Appellate Review

The Court of Appeals violated fundamental rules of appellate review.

1) Rule 52(a) of the Federal Rules of Civil Procedure states that:

> Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness.

The Court of Appeals could not consider or set aside findings of fact of the trial court because it had no record from which

it could determine that the findings of fact were clearly erroneous and unsupported. Nevertheless, the Court of Appeals set aside findings of fact and reweighed the evidence.

2) The Court of Appeals violated the rule that the record on appeal must include the evidence in order to review the factual findings of the court below. *United States v. Davis*, 60 F.3d 1479, 1481 (10th Cir. 1995).

3) The Court of Appeals did not review the findings of fact of the trial court in a light most favorable to the prevailing party below; namely, the Trustee. To the contrary, the Court of Appeals ignored many of the findings and reweighed the evidence in favor of the appellant. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

CONCLUSION

The Supreme Court should grant this petition for a writ of certiorari for the following reasons:

(1) The determination of an equitable property interest is an issue of fact, not a conclusion of law. The Court of Appeals erred in concluding otherwise.

(2) Because the appellant did not include the evidence presented to the bankruptcy court in the record on appeal, the review and reversal of the bankruptcy court's finding of an equitable interest by the Court of Appeals is a departure from the accepted and usual course of judicial proceedings and contrary to the rules and limits of appellate review.

(3) The Court of Appeals deprived the petitioner of due process.

Respectfully submitted,

/S/ Stephen W. Rupp
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May 15, 1998

APPENDIX

FILED
United States Court of Appeals
Tenth Circuit

Jan. 12, 1998
Patrick Fisher
Clerk

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

In re: HAL TAYLOR,	)	
	)	
Debtor.	)	
----------	)	No. 96-4100
JULIA W. TAYLOR,	)	
	)	
Appellant,	)	
	)	
V.	)	
	)	
STEPHEN W. KUPP, Trustee,	)	
	)	
Appellee.	)	

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
(D.C. No. 95-CV-961-C)

J. Kent Holland and Brenda Flanders of Anderson & Holland, Salt Lake City, Utah, for Appellant.

Jeffrey E. Nelson of Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah, for Appellee.

Before MURPHY and LOGAN, Circuit Judges, and MILES-LaGRANGE, District Judge.*

LOGAN, Circuit Judge.

Julia W. Taylor (Julia) appeals the district court's judgment imposing a trust for the benefit of creditors upon real and personal property titled in her name. In an earlier proceeding, her husband, Harold Taylor (Harold), was denied discharge in bankruptcy on the basis that he had willfully and fraudulently omitted material information from his statements and schedules. Steven W. Rupp, bankruptcy trustee, then brought this proceeding against Julia, claiming that Harold's transfers to Julia of the assets at issue here were void or voidable as fraudulent conveyances or, in the alternative, that Harold had equitable interests in them such that the court should impose a constructive or resulting trust.

The bankruptcy judge determined that Harold retained a one-half equitable interest in the couple's Park City home even though he had conveyed his share of a joint tenancy title to Julia seven years before when he was solvent, and that this equitable interest was part of Harold's bankruptcy estate. The judge imposed a resulting and constructive trust for the benefit of creditors on an undivided one-half interest in the home. The judge also determined that the bankruptcy estate

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* The Honorable Vicki Miles-LaGrange, United States District Judge for the Western District of Oklahoma, sitting by designation.

was entitled to a money judgment against Julia for $5,743.50, one-half the allowance for a jointly owned Jeep the couple traded in on another, which they titled in Julia's name alone, about two weeks before Harold filed bankruptcy. The district court summarily affirmed.[1] Julia has appealed both determinations.

I

We have no problem affirming the judgment respecting the Jeep transaction. In 1991 the Taylors purchased a 1990 Jeep and titled it jointly. In June 1992, seventeen days before Harold filed for bankruptcy, they traded that Jeep in as partial payment, receiving $11,487 credit, for a new 1993 Jeep Grand Cherokee titled only to Julia.

Under both the Uniform Fraudulent Transfer Act, Utah Code Ann. §§ 25-6-1 through - 13 (1988), and the Bankruptcy Code, I I U.S.C. § 548(a)(1), when a person has transferred his assets with actual intent to hinder, delay or defraud his creditors, such a transfer can be avoided. Whether the trustee must show actual fraud by a clear and convincing standard, see, e.g., Glinka v. Bank of Vermont (In re Kelton Motors, Inc.), 130 B.R. 170, 179 (Bankr. D. Vt. 1991), or only by a preponderance of the evidence, see Thompson v. Jonovich (In re Food & Fibre Protection, Ltd.), 168 B.R. 408, 418

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[1] Because the district court simply adopted the bankruptcy judge's findings and conclusions, throughout this opinion we refer to the bankruptcy judge's decision as the judgment being reviewed.

(Bankr. D. Az. 1994), we need not decide because, as the court found, the trustee's evidence met the higher standard.

The Uniform Fraudulent Transfer Act includes a nonexclusive list of "badges of fraud" that may be considered as actual evidence of a debtor's intent to defraud. The factors are:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) The debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incur-red;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Utah Code Ann. § 25-6-5(2) (1988). When one or more of these badges are present fraudulent intent can be inferred. Likewise, under 11 U.S.C. § 548(a)(1) bankruptcy courts

consider similar badges of fraud as evidence of actual fraudulent intent. See Max Sugarman Funeral Homes, Inc. v. A.D.B. Investors, 926 F.2d 1248, 1254 (1st Cir. 1991).

As the bankruptcy judge pointed out, in this case there are several badges of fraud. Harold transferred his half interest in the 1990 Jeep to an insider, his wife, two weeks before declaring himself insolvent. In his bankruptcy filing, Harold listed Lynn Knight as his only creditor. Knight had sued Harold in June 1990 in relation to a real estate transaction, and received a $36,879 judgment against him, on which she had pursued a writ of execution in December 1991. The Jeep title transfer occurred after that judgment and only a few days before Harold's filing as a bankrupt. Further, Harold concealed the transfer when he did not disclose it in his statement of financial affairs or list it as an asset in his schedule when he took bankruptcy.

Julia claims that the 1990 Jeep was improperly titled, that it had been purchased with a trade-in from a vehicle which should have been titled in her name, and that the two were merely correcting this error when they purchased the 1993 Jeep. The bankruptcy judge rejected these arguments and also Julia's argument that she used her money to purchase both of the vehicles. The record supports the bankruptcy judge's determination on this issue.

II

A

We have much more difficulty with the findings and conclusions respecting the real estate transfer.

Harold and Julia Taylor purchased their Park City home in November 1973 for approximately $70,000, which they financed by paying $14,000 down and taking a mortgage of approximately $56,000. They took title to the home in joint tenancy. In 1982 Harold suffered a heart attack. In May 1985 he executed and recorded a warranty deed conveying his interest in the home to Julia, so that thereafter it was titled solely in her name. Shortly after the 1985 conveyance to Julia they retired the remaining $25,000 mortgage, with funds which the bankruptcy judge stated "may have come from an inheritance received by" Julia. Appellant's App. 26.[2]

The bankruptcy judge found that until 1985 Harold's income from his real estate business was the primary source for the mortgage payments. The court also found that, although until around 1985 Harold earned a much higher income than Julia, they treated the marriage as a financial partnership and considered income earned by either spouse as part of their joint family funds. Both continued living in the home, sharing the expenses of taxes, utilities, and insurance--with many payments made by checks signed by Harold.

From 1986 to 1989 Harold's income from his real estate business declined dramatically, partly because he was serving as mayor of Park City. During this time Julia's income increased. In 1989 Harold suffered a stroke and ceased earning any income. He began receiving social security benefits in 1992. In March 1989, the Taylors cosigned

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[2] The trustee's complaint appears to acknowledge that Julia paid off the mortgage. App. of Plaintiff/Appellee at 3.

a $60,000 line of credit secured by the Park City home and utilized at least $29,000 of this line of credit for living expenses. Harold did not include any equitable interest in the Park City home in his schedule of assets filed in the bankruptcy proceeding.

B

Julia first argues that the statute of limitations barred the trustee's equitable claims against the Park City home. The trustee filed suit in March 1994. The applicable Utah statute of limitations on equitable claims is four years. See Utah Code Annotated § 78-12-25(3) (four-year statute of limitations on actions "for relief not otherwise provided for by law"); see also American Tierra Corp. v. City of West Jordan, 840 P.2d 757, 760-61 (Utah 1992) (applying § 78-12-25(3) to equity action). The bankruptcy judge determined that the four-year statute began to run in July 1992, when Harold filed his bankruptcy schedules and did not claim an equitable interest in the Park City home. She said this failure to list his equitable interest was the first time Harold took a position contrary to the equitable interest claimed by the plaintiffs. See Carnesecca v. Carnesecca, 572 P.2d 708, 711 (Utah 1977). Julia counters that the statute began to run when Harold transferred his interest and recorded the deed in May 1985. She quotes from Baker v. Patee, 684 P.2d 632 (Utah 1984), that "[n]o resulting trust could come into being, as the plaintiff did not prove that [the grantor] intended anything but an unconditional conveyance of her property. . .. The date of delivery of the deed set the period of limitations in motion and those actions were barred years before [the grantor's] death." Id, at 638.

In Baker, the Utah Supreme Court affirmed the district court's decision because it found that the evidence did not support a resulting trust. "Had [a resulting trust] been the finding in the instant case, the statute of limitations would not begin to run until the trustees affirmatively repudiated the trust. Therefore this action would not be barred." 684 P.2d at 635 (citing Parks v. Zions First Nat'l Bank, 673 P.2d 590 (Utah 1983)). Baker indicates that the statute of limitations is intertwined with the substantive question whether Harold had an equitable interest in the home. If the bankruptcy judge correctly determined that Harold retained an equitable interest, under Utah law the statute of limitations would not have run until he took an action to repudiate that interest when he filed his bankruptcy schedules. If, however, Harold did not retain any equitable interest, then the trustee would not be entitled to recover in any event. We thus must review the merits of the case.

C

The bankruptcy judge's opinion imposed "both a resulting trust . . . and a constructive trust" on the undivided one-half equitable interest she found Harold to own in the Park City home titled in Julia's name. The judge reasoned as follows:

> [Harold] Taylor had an equitable interest in the Park City Home at the time he transferred legal title to [Julia] and he continued to have an equitable interest in the property up to and through the time his bankruptcy petition was filed. [Harold's] equitable interest is evidenced by his original purchase of the Park City Home in 1973 and his continuing payments on

the underlying mortgage debt. The Park City Home was purchased and the transfer was made at times when [he] had substantial income. When the Taylors later obtained the $60,000 Line of Credit in March of 1989, both [Harold] and [Julia] were liable on the loan. Subsequently [Harold] made payments on the Line of Credit and paid taxes, insurance and utilities on the Park City Home.

The Taylors testified that they transferred legal title because of estate planning and inheritance tax concerns after [Harold's] heart attack.

> However, the fact that [Harold] never intended to convey the full beneficial interest in the Park City Home to [Julia] as a gift is evidenced by the Taylors' conduct after [Harold] transferred legal title to [Julia] in 1985. The Taylors treated the Park City Home as their joint marital property and their family home throughout their marriage, both before and after [Harold] transferred legal title to the property to [Julia].

Appellant's App. 49-50. The judge found, however, that there was no evidence Harold was insolvent when he transferred title to the Park City home to Julia or that the transfer was made in anticipation of litigation. Id, at 39. She found that Harold received "some consideration for the transfer because [Julia] paid off the $25,000 mortgage remaining . . . an obligation for which [Harold] would have been jointly liable." Id. The judge also found that Harold "is a real estate broker by profession and understands real estate transactions including the nature of equitable, as opposed to legal, interests in property." Id. at 22.

We may not set aside the bankruptcy judge's fact findings unless they are clearly erroneous. Fed. R. Civ. P. 52(a). The appellate record does not contain a transcript of the testimony presented to the judge. But the apparently undisputed testimony was that Harold intentionally transferred title to the home to Julia "because of estate planning and inheritance tax concerns after [Harold's] heart attack." Appellant's App. 49. Therefore, the judge's finding that Harold "intended" to retain an equitable one-half interest was the judge's inference from the other undisputed facts.

In these circumstances we believe the bankruptcy judge's finding that Harold retained an equitable undivided one-half interest in the home is not a fact finding but a legal conclusion that we review de novo. "Resolution of this issue requires a determination of whether the facts satisfy the proper legal standard, a mixed question of law and fact." Jobin v. McKay (In re M & L Business Machine Co., Inc.), 84 F.3d 1330, 1338 (10th Cir.), cert. denied, 117 S. Ct. 608 (1996). See Hall v. Vance, 887 F.2d 1041, 1043 (10th Cir. 1989) ("This court . . . may exercise de novo review over the bankruptcy court's conclusions of law.").

A bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," 11 U.S.C. § 541(a)(1). The existence and extent of such an interest is determined by state law, in this case the law of Utah. See, e.g., United States v. Rodgers, 461 U.S. 677, 683, 690-91 (1983). The bankruptcy judge, in imposing both a resulting and constructive trust in favor of Harold which his creditors could reach relied principally upon Parks v. Zions First National Bank, 673 P.2d 590 (Utah 1983). We turn our attention

first to whether the bankruptcy judge correctly imposed a "resulting trust."

D

The Parks court indicated that a resulting trust requires an intent to retain. a beneficial interest, and cited Restatement (Second) of Trusts § 442 (1959) which provides that

> Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a wife, child or other natural object of bounty of the person by whom the purchase price is paid, a resulting trust does not arise unless the latter manifests an intention that the transferee should not have the beneficial in the property.

673 P.2d at 598 (quoting Restatement (Second) of Trusts § 442) (emphasis added). Restatement § 442 thus reverses the usual presumption that when one person provides the purchase money for property but another takes legal title to the property, it is intended that the legal owner holds the property for the benefit of the one providing the purchase price. The Parks court rejected a claim of resulting trust because it found no manifestation that the husband there intended to retain a beneficial interest in properties to which he contributed money and labor but which were titled in his wife's name.

In the instant case the bankruptcy judge found that Harold was a real estate broker who "understands real estate transactions." Appellant's App. 22. She acknowledged that the Taylors "testified that they transferred legal title because

of estate planning and inheritance tax concerns after [Harold's] heart attack." Id. at 49. Yet she found Harold never intended to convey the entire beneficial interest because of his later conduct: living on the premises, paying bills, cosigning a letter of credit. In reviewing this determination we must keep in mind that the proof required to impose a resulting trust "must be strong, clear, and convincing, such as to leave no doubt of the existence of the trust," Chambers v. Emery, 45 Pac. 192, 195 (Utah 1896), and that it is the intention "at the time of the transfer and not at some subsequent time which determines whether a resulting trust arises." Restatement (Second) of Trusts § 443 comment a. So viewed, there is no basis for the bankruptcy judge's determination that the facts rebut the presumption that when a husband pays (or here, signs over his interest) for property that is placed in his wife's name, he intends a gift. In fact, Harold's act of conveying his interest was more deliberate because he and Julia already held title to their home jointly. The Taylors' explanation--that Harold had seen his brother's widow experience difficulty selling a home that had been co-owned, that he had heart trouble and wanted to ensure Julia would have the home if he died--while perhaps not a model of legal reasoning must have been discounted for the judge to have reached her conclusion.

The bankruptcy judge appears to have adopted a per se rule that when a husband conveys to his wife his interest in the home but intends to continue to reside there and help pay real estate taxes, insurance, and other household bills that accrue, he intends to continue to hold a fifty percent beneficial interest in the property. As a practical matter such a rule would prevent transfers of title to the home between spouses to accomplish such objectives as avoiding probate and arranging the two estates to tale advantage of the estate and

inheritance tax laws exemptions. See 26 U.S.C. §§ 2001(c), 2010(a).

We are satisfied Harold's intention to continue to live with his wife on the premises and to pay a portion of the bills incurred during that occupancy does not establish clear and convincing proof of his intention to retain an ownership interest in property that he conveyed to his wife for estate planning purposes. Thus, we reject the bankruptcy judge's conclusions to the contrary.

E

We turn next to whether the bankruptcy judge correctly imposed a "constructive trust." "A constructive trust is imposed not because of the intention of the parties but because the person holding title to property would profit by a wrong or would be unjustly enriched if [s]he were permitted to keep the property. A constructive trust, unlike an express or resulting trust is remedial in character." Restatement (Second) of Trusts at 326.

The Parks court noted that constructive trusts are equitable remedies imposed for a variety of circumstances; "[a]n attempt to define or describe a constructive trust would be inadequate because such definition or description would be too narrow in its scope and fail to include important types of constructive trusts." 673 P.2d at 597 (quotation, citation, and footnote omitted). Nevertheless, the circumstances requiring imposition of a constructive trust must be found to exist by "clear and convincing evidence." Nielson v. Rasmussen, 558 P.2d 511, 513 (Utah 1976). We also must remember that we view the situation from Harold's position--not his creditor's--to determine whether it would be a wrong to Harold to let

Julia keep the property. The bankruptcy judge already had found Harold transferred the property while he was solvent and not in anticipation of litigation.

Appellant's App. 39. The trustee here stands in Harold's shoes in claiming ownership of an equitable half of the real estate.

Parks, heavily relied upon by the bankruptcy judge and the trustee, is quite distinguishable from the case before us. In Parks, a husband and wife accumulated significant real estate holdings and made improvements on them during a long-term marriage. The husband was employed throughout the marriage and the wife for the most part was not; they both contributed labor in maintaining and improving the properties. She did the bookkeeping and kept the accounts; and all of the property eventually was titled in her name alone. The wife died; her will left her husband only a conditional life estate in a farm house in which they had lived and a small monthly payment. These benefits terminated if he remarried. The will designated a children's hospital as the ultimate beneficiary of the testamentary trust assets. The husband did not elect against the will or otherwise timely challenge it, but obtained relief by the court's imposition of a constructive trust.

We read Parks as based on the Restatement of Restitution § 160 (1937) idea of unjust enrichment and as such it is imminently reasonable. The court there prevented an injustice by applying equitable remedies where no trust intent existed. In contrast, in the case before us the supposed equitable owner is the one who made the gift, and he manifested no intent that his wife not have the legal and

equitable title to the home. The fact that he paid real estate taxes, insurance and utility bills could certainly be seen as his contributing to the expenses in return for living in the home which she owned. Indeed, a Utah statute imposes on both husband and wife "[t]he expenses of the family," Utah Code Ann. § 30-2-9; many of these payments would surely fall into that category.

The bankruptcy court seemed to rely to some extent on the fact that Harold co-signed the line of credit; but any financial institution loaning money on the security of a home would require a consent or guarantee by a spouse of the title holder because of the spousal elective share and homestead exemptions law. See Utah Constitution, Art. XXII § 1, and Utah Code Ann. §§ 75-2-201, 75-2-202, 75-2-401, 78-23-3, 78-23-4. There were no "badges of fraud" in this case. At the time of the transfer the couple was solvent, and the district court found there was no indication that they were not paying their debts. In contrast, in Parks, a man who worked hard all his life and contributed quite substantially to the property that was accumulated in his wife's name would have been left with virtually nothing unless the court imposed a constructive trust on some of that property.

The bankruptcy judge applied Parks too broadly, adopting a per se rule that would effectively nullify any attempt by one spouse to transfer all right, title and interest in a home in which he or she continues to reside, at least if the grantor continues to pay any costs of the occupancy. We believe that is not the law of Utah. Parks should not be read to eviscerate such plans where a "breadwinning" spouse continues to live in a home owned solely by the other spouse. We found no other case remotely similar that imposed such a

trust.[3] We thus reverse the finding that Harold Taylor had an equitable one-half undivided share in the Park City property.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED for further proceedings consistent with this opinion.

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[3] The closest Utah case on the facts is Mattes v. Olearain, 759 P.2d 11 77 (Utah App. 1988), in which a plaintiff testified she conveyed title to real estate to another to avoid her former husband's creditors. The district court imposed a constructive trust in her favor. Reversing, the Utah Court of Appeals, quoting a Utah Supreme Court case, stated: "'Absent fraud, duress, mistake, or the like attributable to the grantee, a competent grantor will not be permitted to attack or impeach his own deed.' Plaintiff testified she signed the deed of her own will, free of fraud, trick, or threat. She alleged no mistake. As we find no basis to disregard plaintiffs deed . . . the award of the property to plaintiff is reversed." Id. at 1180.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: HAL TAYLOR,	)	
	)	
Debtor.	)	
	)	
	)	
JULIA W. TAYLOR,	)	
	)	
Appellant,	)	
	)	
V.	)	No. 96-4100
	)	
STEPHEN W. RUPP, Trustee,	)	
	)	
Appellee.	)	

ORDER
Filed February 20, 1998

Before MURPHY and LOGAN, Circuit Judges, and MILES-LaGRANGE, District Judge.*

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* The Honorable Vicki Miles-LaGrange, United States District Judge for the Western District of Oklahoma, sitting by designation.

Appellee's petition for rehearing is denied by the panel that rendered the decision.

The suggestion for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. No member of the panel and no judge in regular active service on the court requested that the court be polled on rehearing en banc so the suggestion for rehearing is also denied.

Entered for the Court
PATRICK FISHER.
Clerk of Court

by:
Deputy Clerk

FILED
Clerk, U.S. District Court
22 May 96 AM 10:04
DISTRICT OF UTAH
By: /S/
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH
CENTRAL DIVISION

In re:	:	
HAL TAYLOR	:	
Debtor.	:	ORDER
STEPHEN W. RUPP,	:	Civil No. 2:95-CV-961C
Plaintiff/Appellee,	:	
vs.	:	
JULIA W. TAYLOR,	:	
Defendant/Appellant.	:	

This matter is an appeal from the bankruptcy court's findings and conclusions dated September 8, 1995. In that decision, the court found that appellant had an equitable interest in the Park City home that he lived in with his wife, and that a resulting trust and a constructive trust should be placed on that interest in favor of appellant's creditors. The

court also found that the transfer of appellant's ownership in an automobile to his wife was a fraudulent transfer intended to hinder, delay or defraud a. creditor. The court finds that the factual findings underlying these conclusions are adequately supported by the evidence, and that the bankruptcy court's analysis of the applicable law is correct in all respects. Accordingly, the decision of the bankruptcy court in this matter is affirmed, and this appeal is hereby dismissed.

IT IS SO ORDERED this 22 day of May, 1996.

BY THE COURT:

/S/
TENA CAMPBELL
United States District Judge

THIS ORDER/JUDGMENT
ENTERED
SEP 8 1995
DEPUTY CLERK
U.S. BANKRUPTCY COURT

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:	:	
	:	
HAL TAYLOR,	:	Bankruptcy Number 92B-24610
	:	
Debtor.	:	[Chapter 7]
----------	:	
STEPHEN W. RUPP,	:	Adversary Proceeding Number
Trustee,	:	
	:	94PB-2090
Plaintiff,	:	
	:	
v.	:	
	:	
JULIA W. TAYLOR,	:	
	:	
Defendant.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an adversary proceeding in which the Chapter 7 Trustee asserts that certain transfers made by the debtor are fraudulent pursuant to Utah Code Ann. §§ 25-1-4

to 25-1-14 (1 984), §§ 25-6-1 to 25-6-13 (1988), and/or 11 U.S.C. § 548;[1] for declaration that the estate has an equitable undivided one-half interest in the transferred property; for imposition of a trust for the benefit of creditors; and to quiet title. The court heard the evidence and arguments of counsel, considered the credibility of the witnesses, made an independent analysis of applicable case law and considered post-trial memoranda filed by the parties. Now, being fully informed, the court hereby enters the following:

FINDINGS OF FACT

1. Stephen W. Rupp (Rupp) is the duly appointed, qualified, and acting Chapter 7 Trustee of this bankruptcy estate.

2. Harold W. Taylor (Taylor) is the debtor herein.

3. Taylor is married to Julia W. Taylor (J. Taylor), sometimes known as Judy Taylor (jointly the Taylors). The Taylors were married in May of 1973. The Taylors have a son, Cody Taylor (Cody), who was born in 1975.

4. Taylor is a real estate broker by profession and understands real estate transactions including the nature of equitable, as opposed to legal, interests in property. He conducted his business under the name of Hal Taylor & Associates.

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[1] Future references are to Title 11 of the United States Code unless otherwise noted.

5. For approximately 13 to 16 years during the early part of the Taylors' marriage, Taylor was the primary source of family income, with an income of approximately $5,000 to $6,000 per month.

6. J. Taylor always worked during their marriage. She conducted her business under the name of Judy Taylor Artworks. After Cody's birth, J. Taylor was not the primary source of income for the family until 1989.

7. The Taylors' 1985 joint tax return reflected adjusted gross income from Hal Taylor & Associates of $45,936, and gross income from Judy Taylor Artworks of $9,107.

8. From 1986 until 1989, Taylor served as mayor of Park City, Utah.

9. During his term as mayor, Taylor's real estate business became relatively inactive and his income declined. He was paid $12,000 per year as mayor and his net monthly income was approximately $600.

10. Because Taylor's income decreased, J. Taylor became more active in her art business in order to increase family income.

11. The Taylors' 1987 joint income tax return reflected adjusted gross income from Taylor's wages of $12,000, from Judy Taylor Artworks of $11,764, and from Hal Taylor & Associates of $11,608.

12. The Taylors' 1988 joint income tax return reflected adjusted gross income from Taylor's wages of $12,000,

from Judy Taylor Artworks of $12,565 and no income from Hal Taylor & Associates.

13. In March of 1989, the Taylors obtained a $60,000 home equity loan (Line of Credit) to supplement their income and, although the evidence is contradictory, generally used the funds for family expenses.

14. In May of 1989, Taylor suffered a stroke.

15. After Taylor's stroke J. Taylor became the primary source of income for the family.

16. The Taylors' 1989 joint income tax return showed adjusted gross income from Taylor's wages of $12,000, and from Judy Taylor Artworks of $16,802.

17. The Taylors' 1990 joint income tax return showed adjusted gross income from Judy Taylor Artworks of $21,053 and no income from Hal Taylor & Associates.

18. The Taylors' 1991 joint income tax returns showed adjusted gross income from Judy Taylor Artworks of $13,452 and no income from Hal Taylor & Associates.

19. The Taylors' tax returns reflected other income from interest, rental, farm rental, trust income and partnership income or losses from BCW Development Co. Some of the income items related to an inheritance received by J. Taylor.

20. Taylor held funds in checking accounts with Valley Bank, account numbers 1259-5259 and 73-12-579-2,

in the name of "H.W. Taylor," and account number 1341-3146, in the name of "Hal Taylor Associates."

21. J. Taylor held funds in a business account in the name of "Judy Taylor Artworks."

22. J. Taylor received an inheritance and with the funds therefrom established a savings account at Valley Bank and Trust, (Family Savings Account). Both J. Taylor and Taylor deposited substantial funds into the account and both were able to draw from the account. The Taylors considered the funds in the Family Savings Account to be joint funds. Taylor did not maintain a separate savings account.

23. In May of 1990, Taylor received $13,484.31 from the sale of real property that Taylor owned in Lemhi County, Idaho. The funds were deposited into the H. W. Taylor account and into the Family Savings Account.

24. In June of 1991, Taylor received $25,148.36 from the sale of two lots that Taylor owned in Lemhi County, Idaho. The funds were deposited into Taylor's checking account and into the Family Savings Account.

25. It was not unusual that the funds from the sale of the Idaho real property were deposited partially in the Family Savings Account, and partially in the H. W. Taylor account, because the Taylors considered their funds as partnership funds.

26. Taylor testified that he used the real property sale proceeds for living expenses. There is insufficient evidence to prove Taylor's statement that he used the sale proceeds for living expenses was incorrect.

27. The Taylors received rent of $1,750 per month from October, 1991 to April, 1992 from their home.

28. Taylor received $8,000 as back payments from social security income in 1992, and thereafter received monthly social security payments.

29. Funds received by Taylor and J. Taylor were deposited into the various accounts without consideration as to the source of the funds. Funds were withdrawn from the various accounts to pay family expenses dependent only upon what funds may have been available to pay expenses at the time.

30. It was the Taylors' practice that they did not consider that one or the other held segregated funds in which the other did not have an interest. They generally considered their marriage as a partnership and that any funds were jointly available to pay family expenses.

PARK CITY HOME

31. In November of 1973, the Taylors purchased a home in Park City, Utah (Park City Home) in joint tenancy for approximately $70,000, with a down payment of approximately $14,000. The balance of the purchase price was funded through a mortgage at First Security Bank of approximately $56,000.

32. From 1973 until 1985, Taylor's income was the primary source of funding for payment of the mortgage on the Park City Home.

33. In 1982 Taylor suffered a heart attack.

34. By warranty deed dated May 7, 1985, Taylor conveyed his interest in the Park City Home to J. Taylor and recorded the warranty deed on May 8, 1985. Taylor testified the conveyance was made for estate planning purposes and because Taylor's family had a history of heart disease.

35. Approximately seven months after the execution of the warranty deed, a check drawn on the Family Savings Account paid off the balance on the mortgage of approximately $25,000 that encumbered the Park City Home. The funds to pay off the mortgage may have come from an inheritance received by J. Taylor. In 1985, a one half interest in the Park City Home was worth more than $25,000.

36. At the time Taylor transferred the Park City Home he was a defendant in a lawsuit filed in Third District Court, Salt Lake City, with a Civil Action Number of C83-8632. The case number is at least some evidence that Taylor had been sued or threatened with suit as early as 1983. The suit resulted in judgment against Taylor after a July 21, 1986, trial. Taylor subsequently satisfied the judgment..

37. Although Taylor was involved in litigation during July of 1986, insufficient evidence exists to determine that Taylor was not generally paying his debts as they became due in May of 1985 when the Park City Home was conveyed to J. Taylor. There is insufficient evidence to find that at the time of the transfer, the sum of Taylor's debts was greater than all of Taylor's assets at a fair valuation.

38. The Taylors treated the Park City Home as their joint property and their family home throughout their marriage, and they took no action in conflict with this position

from the time of the 1985 conveyance until Taylor filed bankruptcy in 1992.

39. Taylor continued to live in the Park City Home after May of 1985, and continued to treat the Park City Home as if he had a beneficial interest therein. Taylor paid real property taxes for the years of 1988, 1989 and 1991 from his checking account, and paid some of the utilities. J. Taylor paid real property taxes from her business checking account in 1990.

40. The $60,000 Line of Credit the Taylors obtained in March of 1989 was secured by the Park City Home. The Taylors were both liable on, used, and made payments on the Line of Credit.

41. On April 3, 1989, $29,803.15 from the Line of Credit was deposited in the H. W. Taylor account.

42. Taylor used a portion of the funds that he had deposited in the H. W. Taylor account from the sale of the Idaho properties to make payments on the Line of Credit.

43. There is insufficient evidence to determine the balance owing on the Line of Credit as of July 15, 1992, or the amount of payments, if any, made on the Line of Credit by either Taylor or J. Taylor since the date of filing.

44. The estimated value of the Park City Home as of 1992 was between $250,000 and $300,000.

KNIGHT JUDGMENT AND BANKRUPTCY

45. Lynn Knight (Knight) is Taylor's only creditor listed in this bankruptcy proceeding.

46. On June 17 and 18, 1991, Taylor participated in a trial in Las Animas County, Colorado, regarding certain real estate transactions. Knight was the plaintiff and Taylor and others were defendants in this action docketed on June 29, 1990. Knight obtained a judgment dated August 12, 1991, against Taylor in the amount of $36,879 plus interest and costs of suit (Judgment). The Judgment was filed in the Third District Court of Summit County, Utah, on October 25, 1991.

47. A writ of execution was served on December 23, 1991, on a renter occupying the Park City Home. Taylor was aware of the writ of execution.

48. An order in supplemental proceedings to collect upon the Judgment was issued on June 8, 1992, and again on June 22, 1992, setting hearing dates of June 22, 1992, and June 29, 1992, respectively. The orders in supplemental proceedings directed Taylor not to sell, loan, give away, or otherwise dispose of non-exempt property pending the hearing.

49. An additional writ of execution and precipe was served upon Taylor on June 30, 1992.

50. Taylor's deposition was taken in the Supplemental Proceedings on July 2, 1992.

51. Taylor filed the within chapter 7 case on July 15, 1992.

52. Taylor's Schedule B - Personal Property, lists as assets only miscellaneous books valued at $50, miscellaneous clothing valued at $100 and a 1987 Oldsmobile valued at $1,000. He listed Knight as his only creditor. He did not disclose any transfers.

1990 JEEP WAGONEER

53. By documents dated August 12, 1991, Taylor and J. Taylor purchased a 1990 Jeep Wagoneer that became subject to the writ of execution. The vehicle was purchased jointly in the names of Harold W. Taylor and Julia W. Taylor and was unencumbered.

54. On or about June 28, 1992, and by documents dated July 15, 1992, (the same date as the bankruptcy filing) the Taylors traded in the 1990 Jeep Wagoneer which had broken down on numerous occasions, and purchased a 1993 Jeep Grand Cherokee solely in the name of Julia W. Taylor. The Taylors received a trade-in credit of $11,487 for the 1990 Jeep Wagoneer, one half of which belonged to Taylor. Taylor received no consideration from J. Taylor for placing title to the 1993 Jeep Grand Cherokee solely in her name.

55. The evidence is insufficient to determine the exact date upon which legal title to the 1990 Jeep Wagoneer was transferred. As of the date of filing the within petition, however, Taylor had either just transferred his one-half interest in the 1990 Jeep Wagoneer, or he still possessed a one-half interest in the 1990 Jeep Wagoneer and the transfer occurred immediately post-petition.

56. Although Taylor testified he was not able to pay the Judgment and the Line of Credit, there is insufficient evidence to show Taylor was not generally paying his other debts as they became due at the time the 1990 Jeep Wagoneer was traded in for the 1993 Jeep Grand Cherokee. There is insufficient evidence that at the time of the trade-in, the sum of Taylor's debts was greater than all of Taylor's assets, including his equitable interests, at a fair -valuation.

57. Although J. Taylor may have incurred an obligation to Chrysler Credit Corporation to finance the balance of the purchase price of the 1993 Jeep Grand Cherokee, Taylor made two post-petition payments of $223.79 drawn on the H.W. Taylor account in partial payment of the Chrysler Credit Corporation obligation.

58. Both Taylor and J. Taylor used the 1993 Jeep Grand Cherokee.

59. The 1993 Jeep Grand Cherokee was subsequently stolen and the Taylors received the proceeds of insurance on the vehicle. The evidence traced the insurance proceeds to the Taylors' purchase of a 1989 Voyager with approximately 100,000 miles. There is no evidence as to the value of the 1989 Voyager. The Voyager is now the Taylors only vehicle. J. Taylor is the primary user of the 1989 Voyager, but Taylor uses it once every two or three days.

60. Taylor's transfer of his one-half interest in the 1990 Jeep Wagoneer was not disclosed in his Statement of Financial Affairs. Alternatively, Taylor's one-half interest in the 1990 Jeep Wagoneer was not listed as an asset in Taylor's

Schedules, nor was his $5,743.50 interest in the 1993 Jeep Grand Cherokee.

61. When Taylor transferred his one-half interest in the 1990 Jeep Wagoneer, his intent in placing title in the 1993 Jeep Grand Cherokee solely in J. Taylor's name was to hinder, delay, or defraud his creditor, Knight.

LIFE INSURANCE POLICIES

62. Taylor is the insured under State Farm Life Insurance Policy, policy number LF-0969-1630, issued on September 2, 1988. J. Taylor owns the policy and is the primary beneficiary. The annual premium on the policy is $7,625. The total value of the policy as of December 19, 1994, was $9,542.81. The value of the policy as of July, 1992, is not in evidence.

63. The State Farm Life Insurance policy number LF-969-1630 was purchased on September of 1988, approximately two years prior to the time Taylor was sued by Knight. There is no evidence that Taylor had been sued by other creditors at the time he purchased the policy.

64. On September 18, 1988, Taylor issued a check payable to State Farm in the amount of $4,657.75 drawn on the H.W. Taylor account and referencing "969-1630". On August 23, 1990 and August 19, 1991, Taylor issued checks payable to State Farm in the amount of $7,625 each. Both checks were drawn on the H.W. Taylor account. On August 24, 1992, Taylor issued a check payable to State Farm in the amount of $7,625, drawn on the Hal Taylor Associates account and referencing "969-1630".

65. J. Taylor is the owner and the insured on a second State Farm Life Insurance Policy, policy number LF-1149-8040. There is no evidence of who is the named beneficiary on the policy. The policy is a $400,000 Universal Life Policy purchased April 5, 1991. The total value of the policy as of February 23, 1995, was $1,259.50. The value of the policy as of July, 1992, is not in evidence.

66. State Farm Life Insurance policy number LF-1149-8040 was purchased April 5, 1991, after Taylor had been sued by Knight and two months prior to the Las Animas County, Colorado trial.

67. On June 19, 1991 (the day after the Knight trial), Taylor Issued a check related to State Farm Life Insurance policy number LF-1149-8040, and payable to State Farm in the amount of $10,470 that was drawn on the H.W. Taylor account.

68. There is insufficient evidence that the $10,470 payment was made as a result of the Knight litigation.

69. Taylor owns two additional State Farm policies. Cody Taylor is the insured on State Farm Life Insurance Policy, policy number LF-0642-0748. J. Taylor is the insured on State Farm Life Insurance Policy, policy number LF-0983-0697. J. Taylor is the owner of an additional State Farm Life Insurance Policy, policy number LF-0811-3638 and Cody Taylor is the insured under the policy.

70. Taylor's conflicting testimony was that the policies were purchased because they would accrue cash value, but also for estate protection and not for their cash

values. Taylor withdrew at least some of the cash value on the State Farm policies and used the money to pay family expenses, but there is insufficient evidence to determine the amounts, dates and policies that were drawn upon.

71. J. Taylor testified that the life insurance premiums were paid with joint funds. Although Taylor made most of the payments, the payments were made for the benefit of their family. J. Taylor did not consider drawing on the cash value of the policies until recently.

72. The Taylors held multiple cash value life insurance policies with New York Life Insurance Company. The various policies were not introduced into evidence and the cash value of the policies as of the date of filing is not in evidence.

73. On May 12, 1988, Taylor issued a check payable to New York Life Insurance Company in the amount of $1,390.68 drawn on the H.W. Taylor account. Taylor could not recall the reason for the payment. On November 18, 1988, Taylor issued a check payable to New York Life Insurance Company in the amount of $547.83 drawn on the H.W. Taylor account. Taylor testified that the $547.83 check was a premium payment on one of his life insurance policies. On December 18, 1990, Taylor issued a third check payable to New York Life Insurance Company in the amount of $240.50 drawn on the H.W. Taylor account to pay the premium on a small policy insuring Cody Taylor.

74. New York Life issued a check dated October 12, 1990, to J. Taylor in the amount of $4,018.57 and referencing policy number 31 767 544. J. Taylor could

not recall the transaction. Taylor testified that the funds were a loan against the policy and were used for family expenses.

75. Taylor used funds derived in part from his own income to pay premiums on the policies with State Farm Life Insurance Company and the policies with New York Life Insurance Company. Insufficient evidence exists to determine that at the time he paid the premiums, Taylor was not generally paying his debts as they became due, or that the sum of his debts was greater than all of his assets at a fair valuation.

76. At the time Taylor made some of the payments on the State Farm Life Insurance policies, he was a defendant in the lawsuit filed by Knight.

77. The evidence is insufficient to determine that Taylor exercised control over the State Farm Life Insurance policies not owned by him, or the New York Life Insurance Policies. If any inference can be drawn from the evidence, it would be that J. Taylor controlled the New York Life Insurance policy related to the $4,018.57 check issued to her.

COVEY & COMPANY STOCK

78. Taylor used funds derived in part from his own income to purchase stocks in the name of J. Taylor at Covey & Company, a stock brokerage, over a period of years.

79. J. Taylor testified that the stocks were purchased in her name with joint funds for estate planning purposes.

80. J. Taylor did not conduct any transactions through the Covey & Company account in her name. Taylor was the only person who conducted trades in the account.

81. On July 12, 1990, Taylor paid for stock purchased in the name of J. Taylor by issuing a $2,000 check drawn on his personal account made payable to Covey & Company. There is no evidence that the value of the $2,000 remained in the Covey & Company account as of the date of filing, or that J. Taylor has the benefit of the $2,000.

82. Taylor deposited a social security check for $523 into the Hal Taylor Associates account on July 9, 1992. Taylor purchased stock valued at $345 from Covey & Company by check dated July 20, 1992, drawn on the Hal Taylor Associates account. The stock purchase took place five days after Taylor filed his bankruptcy petition on July 15, 1992, but ten days before he filed his Schedules and Statement of Financial Affairs on July 30, 1992. Taylor did not list the stock purchase in his Schedules and Statements of Affairs.

83. There is no evidence of the balance in the Covey & Company account on the date Taylor filed his bankruptcy petition. On or about the third quarter of 1994, stock of a market value of only $.09 remained in the account. There is insufficient evidence that would link any specific stock purchase to the stock currently held in the Covey & Company account.

84. There is insufficient evidence to show that, at the time Taylor purchased stock in 1990, Taylor had been sued or had been threatened with suit. At the time Taylor purchased stock on July 20, 1992, he had been served with a

writ of execution by Knight and was subject to an Order in Supplemental Proceeding that was stayed as a result of this chapter 7 filing.

85. Insufficient evidence exists to demonstrate that at time he purchased the stocks in J. Taylor's name, Taylor was not generally paying his debts as they became due or that the sum of his debts was greater than all of his assets, including his equitable interests, at a fair valuation.

CONCLUSIONS OF LAW

The jurisdiction of this court is properly invoked pursuant to 28 U.S.C. §§ 157(a) and 1334(b); Fed. R.Bankr. P. 7001(l) and (2), and D. Ut. #404(a) of the United States District Court for the District of Utah. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) (H) (K) and (0). Venue is proper in the Central Division of the District of Utah pursuant to 28 U.S.C. § 1409(a).

ACTUAL FRAUD PURSUANT TO UTAH CODE ANN. § 25-6-5(l) AND 11 U.S.C. § 548(a)(l)

Rupp asserts that Taylor has transferred his assets with actual intent to hinder, delay, or defraud his creditors pursuant to the Uniform Fraudulent Transfer Act, Utah Code Ann. § 25-6-1, *et seq.* (1988)[2] and 11 U.S.C. § 548(a)(1).[3]

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[2] The Utah Fraudulent Conveyance Act, Utah Code Ann. §§ 25-1-1 to 25-1-16 (1984), was repealed effective April 25, 1988. It has been replaced by the Uniform Fraudulent Transfer Act contained at Utah Code Ann. §§ 25-6-1, *et. seq. (1988).*

[3] Section 548(a)(1) states:

> (a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation

The elements of a fraudulent transfer under state law are set forth in Utah Code Ann. § 25-6-5 for transfers occurring on or after April 25, 1988, and in Utah Code Ann. § 25-1-7 for transfer occurring before April 25, 1988. The 1985 transfer of the Park City Home is the only transfer governed by the prior statute, Utah Code Ann. § 25-1-7 (1984). For all subsequent transfers the Uniform Fraudulent Transfer Act provisions contained in Utah Code Ann. § 25-6-4 (1988) are applicable.

Rupp bears the burden of proving actual fraud pursuant to the state statute by clear and convincing evidence. *Territorial Savings & Loan Ass'n v. Baird,* 781 P.2d 452, 462 (Utah Ct. App. 1989). A split of authority exists, however, in courts construing the burden of proof to be applied pursuant to § 548(a)(1). Several bankruptcy courts have held that the standard is clear and convincing evidence.[4] Other

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3 Cont. incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily

> (1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted;

4 *Glinka v. Bank of Vermont (In re Kelton Motors, Inc.),* 130 B.R. 170, 179 (Bankr. D. Vt. 1991); *Sommers v. Sorce (In re Major Funding Corp.),* 126 B.R. 504, 508 (Bankr. S.D. Tex. 1990); *Official Unsecured Creditors Committee v. Kuhns (In re Kuhns), 101* B.R. 233, 241 (Bankr. D. Mont. 1989); *Armstrong v. Ketterling (In re Anchorage Marina, Inc.),* 93 B.R. 686, 691 (Bankr. D.N.D. 1988); *Talbot v. Warner (In re Warner),* 65 B.R. 512, 518-519 (Bankr. S.D. Ohio 1986).

courts have held that the standard is a preponderance, extending the holding in *Grogan v. Garner*, 498 U.S. 279, 111 S. Ct. 654 (1991), to fill bankruptcy proceedings grounded in allegations of fraud. "[5] This court finds it unnecessary to resolve the split of authority because Rupp has either met his burden by clear and convincing evidence, or in those instances where he has not meet his burden, he has failed to do so even by the lesser preponderance standard.

The Uniform Fraudulent Transfer Act, Utah Code Ann. § 25-6-5(2)(1988), contains a list of non-exclusive factors or "badges of fraud" that may be considered as circumstantial evidence of the debtor's actual intent to defraud.[6] Similar

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[5] *Thompson v. Jonovich (In re Food & Fibre Protection, Ltd.)*, 168 B.R. 408, 418 (Bankr. D. Ariz. 1994) (quoting *Western Wire Works, Inc., v. Lawler (In re Lawler)*, 141 B.R. 425 (9th Cir. BAP 1992)); *Mancuso v. T. Ishida USA, Inc., (In re Sullivan)*, 161 B.R. 776, 779-780 (Bankr. N.D. Tex. 1993).

[6] The factors are:

(a) the transfer or obligation was to an insider;
(b) the debtor retained possession or control of the property transferred after the transfer;
(c) the transfer or obligation was disclosed or concealed;
(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit,
(e) the transfer was of substantially all the debtor's assets;
(f) the debtor absconded;
(g) the debtor removed or concealed assets;

badges of fraud were established by case law prior to the state of Utah's adoption of the Uniform Fraudulent Transfer Act in 1988. *See Dahnken, Inc. v. Wilmarth,* 726 P.2d 420, 423 (Utah 1986) (citing *Givan v. Lambeth, 10* Utah 2d 287, 291, 351 P.2d 959, 962 (1960)). Fraudulent intent can be inferred where one or more of the badges are present. *Territorial Savings & Loan Ass'n v. Baird,* 781 P.2d at 462; *see Dahnken,* 726 P. 2d at 423.

Bankruptcy courts have considered similar badges of fraud or "circumstantial indicia of fraudulent intent" as evidence of actual intent to defraud under § 548(a)(1). Max *Sugarman Funeral Home, Inc. v. A.D.B. Investors,* 926 F.2d 1248, 1254 (1st Cir. 1991); *Thompson v. Jonovich (In re Food & Fibre Protection, Ltd.),* 168 B.R. 408 (Bankr. D. Ariz. 1994). The presence of several badges of fraud can amount to "conclusive evidence of an actual intent to defraud." *Max Sugarman,* 926 F. 2d at 1254-55.

Park City Home

Taylor transferred the Park City Home to J. Taylor, a family member, and an insider of Taylor as defined

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6 Cont.

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Utah Code Ann. § 25-6-5(2) (1988).

by § 101(31)(A)(I). He continued to live in and use the Park City Home, retaining both possession and control over the property. These factors weigh in favor of Rupp.

Taylor, however, recorded the warranty deed and did not conceal the transfer of the Park City Home. The evidence is insufficient to determine whether any other badges of fraud apply. There is no evidence that Taylor was insolvent at the time he transferred the Park City Home. There is no evidence that the transfer was made in anticipation of litigation. Although Taylor may have been a defendant in a lawsuit as early as 1983, Taylor paid in full. the judgment which resulted from that litigation approximately one year after the transfer of the Park City Home. Taylor received some consideration for the transfer because J. Taylor paid off the $25,000 mortgage remaining on the Park City Home, an obligation for which Taylor would have been jointly liable. The evidence is inconclusive regarding the value of the Park City Home at the time of transfer for the purpose of determining whether reasonably equivalent value or fair consideration was given. At a minimum, a one half interest in the Park City Home was worth more than $25,000.

The transfer of the Park City Home was made without actual intent to hinder, delay or defraud creditors as set forth in Utah Code Ann. § 25-1-7 (1984) as made applicable by § 544 of the Bankruptcy Code. The transfer of the Park City Home was not a transfer made within one year of the date of filing of the petition as required by § 548(a)(1). Rupp has not sustained his burden of proving by either clear and convincing evidence or a preponderance of the evidence that Taylor transferred the Park City Home with actual intent

to hinder, delay, or defraud a creditor of the debtor under either Utah Code Ann. § 25-1-7 or § 548.[7]

1990 Jeep Wagoneer

Taylor transferred his one half interest in the 1990 Jeep Wagoneer to J. Taylor, an insider, within one year before the date of filing of his bankruptcy petition, or immediately thereafter. The transfer of Taylor's one-half interest occurred after the Judgment was incurred. Taylor transferred the 1990 Jeep Wagoneer at the time he was subject to a writ of execution and an order in supplemental proceedings pertaining to the Judgment. Taylor concealed the transfer by failing to disclose it in his Statement of Financial Affairs, and by not listing his interest in either the 1990 Jeep Wagoneer or the 1993 Jeep Grand Cherokee as an asset in his Schedules. Taylor continued to use the 1993 Jeep Grand Cherokee and made at least two payments thereon.

Rupp has sustained his burden of proving by clear and convincing evidence that Taylor transferred his interest in the 1990 Jeep Wagoneer with actual intent to hinder, delay, or defraud a creditor of the debtor pursuant to Utah Code Ann. § 25-6-5(l) as made applicable by § 544, and § 548(a)(1) and the transfer is avoided. Rupp is entitled to judgment on behalf of the estate against J. Taylor, as the initial transferee of Taylor's $5,743.50 interest in the 1990 Jeep Wagoneer, pur-

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[7] The court need not make a determination of which statutory analysis is most appropriate in this case because the relief requested is denied under either statute.

suant to § 550(a)(1). Since Rupp has prevailed in recovering Taylor's $5,743.50 interest in the 1990 Jeep Wagoneer, it is unnecessary to analyze the transfer of the 1990 Jeep Wagoneer under the alternative theories Rupp plead.

Life Insurance Policies

To the extent Taylor paid the premiums on insurance policies owned by J. Taylor on various occasions between 1988 and 1992, it is arguable that Taylor transferred assets not to an insider, but to the insurance companies to pay for current insurance benefits. *Rupp v. Markgraf,* No. 94-C-288J, slip op. at 8-9 (D. Utah July 6, 1995)(interpreting § 25-6-6(l) of the Utah Fraudulent Transfer Act-such that bank from whom a cashiers check was purchased was initial transferees of the debtor's property, not the recipients of the cashiers check), *appeal docketed,* No. 95-4120 (10th Cir. July 26, 1995). Although some of the premiums were paid by Taylor at the time he was defending litigation filed by Knight and at or near the time Knight obtained a judgment against Taylor, the payments appear to represent regular annual premiums. There is either no evidence or insufficient evidence to demonstrate the existence of any of the other badges of fraud.

Rupp has not sustained his burden of proving by either clear and convincing evidence or a preponderance of the evidence that Taylor's payment of insurance premiums were transfers made with actual intent to hinder, delay, or defraud a creditor of the debtor under § 548(a)(1) or Utah Code Ann. §25-6-5(l) as made applicable by § 544.

Covey & Company Stock

The evidence shows Taylor purchased stock from Covey & Company in J. Taylor's name in the amount of $2,000 on July 12, 1990, and $345 on July 20, 1992. Although there is evidence that Taylor retained control of the Covey & Company account, there is insufficient evidence to show that Taylor was insolvent or that he satisfied enough of the badges of fraud to provide circumstantial evidence of an intent to defraud his creditors at the time he purchased the stock in 1990. Finally, the purchase of stock in 1990 is beyond the one year statutory reach-back period contemplated by § 548(a)(1).

Taylor's purchase of $345 in stock from Covey & Company on July 20, 1992, took place five days after Taylor filed his bankruptcy petition. Rupp has not presented sufficient evidence to demonstrate that the $345 used to purchase the stock post-petition was estate property. The only evidence before the court is that Taylor deposited a social security check for $523 into the account of Hal Taylor Associates on July 9, 1992. However, the evidence does not tie the deposited funds to the funds used post-petition to purchase the stock. Although the court recognizes some nexus between the two, such circumstantial evidence is insufficient to link the funds. Section 548(a)(1) is also inapplicable to these facts to the extent its application is expressly limited to transfers occurring on or within one year before the date of filing. Taylor's postpetition purchase of stock may give rise to a claim pursuant to § 549, but this theory was neither plead nor proved by Rupp in this proceeding.

Rupp has not sustained his burden of proving by either clear and convincing evidence or a preponderance of the evidence that Taylor's purchases of stock in the name of J. Taylor on July 12, 1990, in the amount of $2,000, or on July 20, 1992, in the amount of $345, were transfers made with actual intent to hinder, delay, or defraud a creditor pursuant to Utah Code Ann. § 25-6-5(l) as made applicable by § 544, or to § 548(a)(1).

CONSTRUCTIVE FRAUD PURSUANT TO UTAH CODE ANN. § 25- 6-6(l) AND § 548(a)(2)

The Uniform Fraudulent Transfer Act contained at Utah Code Ann. § 25-6-6 (1988)[8] provides three requirements for proving constructive fraud. Under Utah law the plaintiff must demonstrate all three of the following elements by clear and convincing evidence: 1) the plaintiff is a creditor of the debtor; 2) the debtor was insolvent or rendered insolvent by the conveyance; and 3) the conveyance was made without fair consideration. *Territorial Savings & Loan Ass'n v. Baird,* 781 P.2d 452, 458 (Utah Ct. App. 1989).

Section 548(a)(2) of the Bankruptcy Code contains constructive fraud elements similar to the state statute, requiring that a debtor be insolvent, or rendered insolvent at

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[8] Taylor's transfer of the Park City Home in 1985, occurred before the enactment of this statute in April 25, 1988, and is governed by Utah Code Ann. § 25-1-4 (1985). The requirements of the two statutes are substantially similar.

the time of the transfer and have received less than reasonably equivalent value. Section 548 also contains a one year reach back provision. The trustee bears the burden of demonstrating constructive fraud pursuant to § 548(a)(2) merely by a preponderance of the evidence. *Glinka v. Bank of Vermont (In re Kelton Motors, Inc.),* 130 B. R. 170, 179 (Bankr. D. Vt. 1991).

Insolvency is defined by both the Bankruptcy Code and in the state statute. Section 101(32), Utah Code Ann. § 25-6-3 (1988) and Utah Code Ann. § 25-1-2 (1984) contain definitions of insolvency based on a balance sheet test. Utah Code Ann. § 25-6-3 (1988) adds a presumption that one who does not pay his or her debts as they become due is insolvent.

Insufficient evidence exists to determine that Taylor was insolvent as defined by either the state statute or the Bankruptcy Code when the relevant transfers were made. Although Taylor testified he was not able to pay the Judgment and the Line of Credit, Rupp has failed to demonstrate by a preponderance of the evidence that Taylor was not generally paying his other debts as they became due. Rupp has also failed to prove by a preponderance of the evidence that the sum of Taylor's debts was greater than the sum of his assets, including his equitable interests, at fair valuation. Because insolvency is a key element that must be proved to establish constructive fraud, Rupp has failed to prove his cause of action pursuant to Utah Code Ann. § 25-1-4 (1984), Utah Code Ann. § 25-6-6(l) (1988) or 11 U.S.C. § 548(a)(2).

EQUITABLE INTERESTS AND IMPOSITION OF CONSTRUCTIVE TRUST

Pursuant to § 704, Rupp is charged with the duty to collect and reduce to money property of the estate. In this case Rupp must stand, not in the shoes of creditors under § 544, but in the shoes of Taylor, who allegedly holds an equitable interest in the Park City Home, the life insurance policies and the Covey & Company stock. Section 541 includes not only legal interests but equitable interests held by the debtor as of the commencement of the case.[9]

Although § 541 controls the determination of what constitutes property of the estate, "bankruptcy courts must still look to state law to determine the existence and nature of the debtor's interest in property. *Kandel v. Reichel (In re Strabley),* 96 B.R. 785 Bankr. N.D. Ohio 1988); *See In re Linderman,* 20 B. R. 826, 828-29 (Bankr. W. D. Wash. 1982) (Bankruptcy Code relies upon non-bankruptcy law to determine whether a legal or equitable interest in property exists for the purposes of 11 U.S.C. § 541(a)(1)).

The burden of establishing an equitable interest in property by overcoming a written instrument is by clear and

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[9] Section 541 states:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Stich estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case. . ..

convincing evidence. *Baker v. Pattee,* 684 P. 2d 632, 634. (Utah 1984). Thus, a party seeking to establish a constructive trust must "show by clear and convincing evidence that equitable grounds for imposing a trust exist." *Hiltsley v. Ryder,* 738 P. 2d 1024, 1026-27 (Utah 1987) (Zimmerman, J. concurring) (citing *Baker v. Pattee,* 684 P.2d 632, 637 (Utah 1984)).

Statute of Limitations

Utah Code Ann. § 78-12-25(3) provides a four year statute of limitations on actions for relief not otherwise provided for by law. " Utah courts have applied this catch-all provision to actions in equity. *See American Tierra Corp. v. City of West Jordan,* 340 P. 2d 757, 761 (Utah 1992). The statute of limitations for actions in equity begins to run when an action is taken to repudiate a contract or an adverse position is asserted. *Carnesecca v. Carnesecca, 572* P.2d 708, 711 (Utah 1977) (citing *In re Madsen's Estate,* 123 Utah 327, 259 P.2d 595 (1953).[10]

In this case Rupp first asserted an adverse position when the Complaint was filed on March 10, 1994, claiming an equitable interest in J. Taylor's sole legal title to the Park City Home and other personal property on behalf of the estate. However, since Rupp stands in Taylor's shoes, the court must also consider at what point Taylor began to assert

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[10] *Cf. American Tierra Corp. v. City of West Jordan,* 840 P.2d 757, 761 (Utah 1992) (limitation period begins to run as of the date on which the action could have been maintained to a successful conclusion).

an adverse position. Taylor lived in the Park City Home and continued to use it and the Covey & Company account as his own through the time he filed his bankruptcy petition. On July 30, 1992, Taylor filed his bankruptcy Statements and Schedules and did not list his equitable interest in the Park City Home or the other personal property at issue. It was at this point that Taylor began to assert a position adverse to his alleged ownership of an equitable interest in the Park City Home, the life insurance policies and the Covey & Company stock. July 30, 1992, is the earliest date from which the four year statute of limitations began to run. Rupp's Complaint was filed on March 10, 1994, and is within the four year statute of limitations.

Remedies

Under Utah law the court may impose a constructive trust to avoid unjust enrichment by a party holding legal title to property subject to the equitable interest of another. *Parks v. Zions First National Bank,* 673 P.2d 590, 600 (Utah 1983). Numerous types of constructive trusts exist and their forms and varieties are nearly limitless. *Parks,* 673 P.2d at 597. A constructive trust is an equitable remedy which "arises by operation of law and is not within the statute of frauds." *Nielson v. Rasmussen,* 558 P.2d 511, 513 (Utah 1976) (quoting *Haws v. Jensen,* 116 Utah 212, 209 P.2d 229 (1949)).

Resulting Trust

Rupp asserts that he may recover under a resulting trust theory. The general rule states that a purchase money resulting trust arises where one party pays the purchase price for property titled in the name of another. *Bill Nay & Sons*

Excavating v. Neeley Construction Co., 677 P.2d 1120, 1122 (Utah 1984); *Zion's First National Bank v. Fennemore (In re Hock), 655* P.2d 11 11, *11* 15 (Utah 1982). Where these elements are established, it is unnecessary to prove that a trust was intended, because an inference is raised that the recipient was not to take the beneficial interest in the property. *Fennemore,* 655 P.2d at 1115.

An exception to this general rule arises pursuant to § 442 of the Restatement (Second) of Trusts when a husband pays the purchase price, but places title to property in his wife's name.[11] In that case, the law will infer donative intent unless the transferor can rebut the presumption of a gift. *Parks v. Zions First National Bank,* 673 P.2d 590, 607 (Utah 1983) Howe, dissenting). Where the transferor is unable to rebut the presumption, "he has no equitable or beneficial interest because he reserved none. "*Parks,* 673 P.2d 590, 608 (J. Howe, dissenting). Where the transferor is unable to rebut the presumption, "he has no equitable or beneficial interest because he reserved none." *Parks*, 673 P. 2d 590, 608 (J. Howe, dissenting).

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[11] Section 442 of the Restatement states:

> Where a transfer of property is made to one person and the purchase price is paid by another and the transferee is a wife, child or other natural object of bounty of the person by whom the purchase price is paid, a resulting trust does not arise unless the latter manifests an intention that the transferee should not have the beneficial interest in the property.

Parks v. Zions First National Bank, 673 P.2d 590, 598 (Utah 1983) (quoting § 442 Restatement (Second) of Trusts).

In order to establish a resulting trust, Rupp, standing in Taylor's shoes, must rebut the presumption that Taylor transferred the Park City Home, the insurance premiums and the Covey & Company stock to J. Taylor as a gift. To rebut the inference of a gift Rupp must demonstrate by clear and convincing evidence that Taylor intended that J. Taylor "should not have the beneficial interest in each piece of property as it was acquired. "*Parks,* 673 P.2d 590, 607 (J. Howe, dissenting). Although Rupp must show that Taylor intended to retain the equitable or beneficial interest in the property transferred at the time of the transfer, the Taylors subsequent conduct may provide evidence of Taylor's intent at the time of the transfer. *Parks,* 673 P. 2d 590, 607 (J. Howe, dissenting). The nature of the interest retained by Taylor in the transferred property, if any, is also an element of a constructive trust based on unjust enrichment as described below. For this reason, Rupp's resulting trust and constructive trust arguments will. be addressed together below.

Constructive Trust Based on Unjust Enrichment

While a resulting trust pursuant to § 442 of the Restatement (Second) of Trusts requires a showing of intent by the transferor to retain a beneficial interest, the broadest forms of constructive trusts, such as those created by § 160 of the Restatement of Restitution (1937), require no element of intent. *Parks,* 673 P.2d at 599; *Hiltsley v. Ryder,* 738 P.2d 1024, 1026 (Utah 1987) (J. Zimmerman concurring) (a constructive trust may be imposed in the absence of any express or implied intention to form a trust to prevent unjust enrichment). Section 160 of the Restatement of Restitution provides that a constructive trust may arise "where a person holding title to property is subject to an equitable duty to

convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it". *Parks,* 673 P.2d at 599 (quoting Restatement of Restitution § 160 (1937)). In *Parks,* the court imposed a constructive trust to avoid unjust enrichment after finding that the plaintiff had an equitable interest in the property because his "labors and earnings were responsible for the acquisition of a substantial portion of the marital estate. " *Parks,* 673 P. 2d at 600. Based on *Parks,* this court may impose a constructive trust pursuant to § 160 of the Restatement to avoid unjust enrichment by J. Taylor if Taylor retained an equitable interest in the transferred property.

Park City Home

Taylor had an equitable interest in the Park City Home at the time he transferred legal title to J. Taylor and he continued to have an equitable interest in the property up to and through the time his bankruptcy petition was filed. Taylor's equitable interest is evidenced by his original purchase of the Park City Home in 1973 and his continuing payments on the underlying mortgage debt. The Park City Home was purchased and the transfer was made at times when Taylor had substantial income. When the Taylors later obtained the $60,000 Line of Credit in March of 1989, both Taylor and J. Taylor were liable on the loan. Subsequently Taylor made payments on the Line of Credit and paid taxes, insurance and utilities on the Park City Home.

The Taylors testified that they transferred legal title because of estate planning and inheritance tax concerns after Taylor's heart attack. However, the fact that Taylor never intended to convey the full beneficial interest in the Park City Home to J. Taylor as a gift is evidenced by the Taylors'

conduct after Taylor transferred legal title to J. Taylor in 1985. The Taylors treated the Park City Home as their joint marital property and their family home throughout their marriage, both before and. after Taylor transferred legal title to the property to J. Taylor.

Their conduct at the time of transfer and subsequent to, the transfer shows that they intended Taylor to retain an interest in the property. Rupp has overcome the presumption that Taylor's transfer of legal title to his one half undivided joint tenant interest in the Park City Home to J. Taylor was intended as a gift. Rupp has met his burden of demonstrating by clear and convincing evidence that Taylor retained an equitable undivided one-half interest in the Park City Home, and Rupp is entitled to judgment quieting title to the undivided one-half interest in the estate. The court will impose both a resulting trust in Taylor's undivided one-half interest in the Park City Home, and a constructive trust in Taylor's undivided one-half interest in the Park City Home because J. Taylor would be unjustly enriched by retaining exclusive ownership of the Park City Home despite Taylor's equitable interest.[12] The trusts shall be in favor of Rupp, as trustee of this estate, for the benefit of Taylor's creditors.

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[12] *Parks*, 673 P.2d at 600 (citation omitted) (resulting and constructive trust may be imposed upon accumulated assets in whatever form they now take); *see Butler v. Wilkerson*, 740 P.2d 1244, 1262 (Utah 1987) (where original property was sold to a *bona fide* purchaser and could no longer be recovered, court imposed constructive trust over proceeds to avoid unjust enrichment from retention of market appreciation).

Life Insurance Policies

Taylor made payments on two State Farm Life Insurance policies owned by J. Taylor, policy numbers LF-969-1630 and LF-1149-8040. Both policies had accrued cash values, as did three other State Farm Life Insurance policies owned by either Taylor or J. Taylor. Taylor paid premiums on both policies with checks from his personal account and with at least one check from the Hal Taylor Associates account. Taylor testified that the Taylors withdrew some of the cash value on the State Farm Life Insurance policies for family expenses, but Taylor did not specify whether the cash values that were withdrawn were from policies LF-969-1630 and LF1149-8040 or from other policies. Taylor also did not specify the amounts withdrawn or the timing of the withdrawals.

Rupp has not demonstrated by clear and convincing evidence that Taylor intended to retain a beneficial interest in the insurance premium payments or the State Farm Life Insurance policies themselves. Rupp has failed to overcome the presumption that Taylor's payments of policy premiums to State Farm on policies owned by J. Taylor were intended as a gift to J. Taylor. Rupp has failed to meet his burden by clear and convincing evidence that Taylor exercised dominion and control over the insurance policies sufficient to retain a beneficial interest from which the court could determine that Taylor had an equitable interest in the State Farm Life Insurance policies. The court will not impose either a resulting trust or a constructive trust in favor of Rupp in relation to the State Farm Life Insurance policies.

Taylor made two payments to New York Life by checks drawn on his personal account. The New York Life

Insurance policies had cash values, but there is no evidence of the total cash values available at any time prior to Taylor's bankruptcy filing.

There is no evidence as to who is the owner of the New York Life Insurance polices. In order for the court to determine that Taylor has an equitable interest in the New York Life Insurance policies, or that Taylor intended to make a gift to J. Taylor by paying premiums on the policies, the evidence must show that J. Taylor had an ownership interest in the New York Life Insurance policies. The policies are not in evidence. The fact that New York Life issued the October 12, 1990, check in the amount of $4,018 to J. Taylor as a loan against the cash value of policy number 31 767 544 is only circumstantial evidence that J. Taylor owned the policy. Even if J. Taylor owned the policy, there is insufficient evidence to demonstrate that the two checks made payable to New York Life Insurance Company by Taylor were premium payments on the same policy from which J. Taylor received the $4,018 loan.

Rupp has failed to establish by clear and convincing evidence that Taylor transferred property in which he retained an equitable interest to J. Taylor by making the two payments on the New York Life Insurance policies. Even if Rupp has established that Taylor made two premium payments on a policy owned by J. Taylor, Rupp has failed to overcome the presumption that Taylor's payments were intended as a gift to J. Taylor. Rupp has failed to meet his burden by clear and convincing evidence that Taylor retained a beneficial interest in the payments from which the court could determine that Taylor had an equitable interest in the *New* York Life Insurance policies. The court will not impose either a resulting trust or a constructive trust in favor of Rupp in

payments made by Taylor to New York Life Insurance Company.

Covey & Company Stock

Taylor made two purchases of stock from Covey & Company in the name of J. Taylor. The first purchase in the amount of $2,000 was made by Taylor on July 12, 1990. The court must make the initial presumption that Taylor intended to make a gift to J. Taylor at the time he purchased the $2,000 in stock by placing the stock account in J. Taylor's name. J. Taylor testified that the stock was purchased for estate planning purposes. Rupp has established, however, that the stock was purchased less than two weeks after Knight filed suit against Taylor and at a time when Taylor had income from the sale of property he owned in Lemhi County, Idaho. Taylor continued to exercise control over the stock after the purchase, and J. Taylor never conducted any transactions related to the account in her name. The court concludes from this, evidence that Taylor did not intend to transfer to J. Taylor the beneficial interest in the $2,000 used to purchase the stock, and Rupp has overcome the presumption that Taylor intended to purchase the stock as a gift to J. Taylor. Rupp has meet his burden of demonstrating by clear and convincing evidence that Taylor retained an equitable interest in the $2,000 used to purchase stock solely in J. Taylor's name. Although grounds exist to impose a resulting trust in favor of Rupp on Taylor's $2,000 interest in the Covey & Company stock, there is no evidence that $2,000 in value remained in the Covey & Company account as of the date of filing, and there is no evidence from which the court can determine the value, if any, remaining in the Covey & Company account on the date Taylor filed his bankruptcy petition. The court will not impose a resulting

trust because there is no evidence that there is any property titled in J. Taylor's name to which the trust could attach.[13] The court cannot determine that J. Taylor would be unjustly enriched by retaining ownership of the Covey & Company stock despite Taylor's equitable interest because there is no evidence that the Covey & Company account had any value as of the date of filing. The court will not impose a constructive trust on the Covey & Company stock account based upon unjust enrichment.

Taylor made a second stock purchase in the amount of $345 from Covey & Company on July 20, 1992. The Court's ability to determine whether Taylor used estate assets to make the $345 stock purchase on July 20, 1992, is hindered by gaps in the evidence presented by Rupp. The $345 purchase of stock took place five days post-petition. Rupp has not established a sufficient nexus between Taylor's deposit of the social security check in the amount of $523 into the Hal Taylor Associates account pre-petition, and his post-petition purchase of the stock from the same account. Without further evidence the court cannot conclude that the $345 stock purchase was made with property of the estate subject to recovery by Rupp, even had Rupp so plead under §549.

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[13] *In Butler v. Wilkerson*, the court imposed a constructive trust based upon unjust enrichment and awarded a money judgment premised upon an increase in market value of the underlying property. In this case, since the evidence shows losses in the Covey & Company account, no money judgment will be awarded as a result of the $2,000 payment.

Rupp has failed to establish by clear and convincing evidence that Rupp, standing in Taylor's shoes, holds an equitable interest in the stock purchased by Taylor post-petition. Although Rupp may have a claim pursuant to § 549 for avoidance of a post-petition transfer of property of the estate. there is insufficient evidence to establish that this particular transfer of $345 was made with property of Taylor's bankruptcy estate.

By document dated September 8, 1995, the court hereby enters Judgment accordingly.

DATED this 8th day of September, 1995.

/S/
JUDITH A. BOULDEN
United States Bankruptcy
Judge

THIS ORDER/JUDGMENT
ENTERED
SEP 8 1995
DEPUTY CLERK
U.S. BANKRUPTCY COURT

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:	:	
	:	
HAL TAYLOR,	:	Bankruptcy Number 92B-24610
	:	
Debtor.	:	[Chapter 7]
	:	
STEPHEN W. RUPP, Trustee,	:	Adversary Proceeding Number
	:	94PB-2090
Plaintiff,	:	
	:	
v.	:	
	:	
JULIA W. TAYLOR,	:	
	:	
Defendant.	:	

JUDGMENT

This is an adversary proceeding in which Stephen W. Rupp, plaintiff herein and the Chapter 7 Trustee of this

chapter 7 estate, asserts that certain transfers made by Hal Taylor, the debtor herein, to Julia W. Taylor, his wife, are fraudulent pursuant to Utah Code Ann. §§ 251-4 to 25-1-14 (1984), §§ 25-6-1 to 25-6-13 (1988), and/or 1 1 U.S.C. § 548; for declaration that the estate has an equitable undivided one-half interest in the transferred property; for imposition of a trust for the benefit of creditors; and to quiet title.

The court heard the evidence and arguments of counsel, considered the credibility of the witnesses, made an. independent analysis of applicable case law and considered post-trial memoranda filed by the parties. The court entered Findings of Fact and Conclusions of Law dated September 8, 1995, determining that the Trustee is entitled to judgment on behalf of the estate quieting title to the estate's interest in certain real property; to the imposition of a resulting and constructive trust over the estate's one-half undivided interest in the real property; and further that the estate was entitled to a money judgment against Julia W. Taylor for the value of the estate's undivided one-half interest in the proceeds from the sale of a 1990 Jeep Wagoneer.

Based thereon, the court hereby enters judgment in favor of Stephen W. Rupp, Chapter 7 Trustee of the estate of Hal Taylor, and it is hereby:

ORDERED, ADJUDGED AND DECREED, that title to the estate's undivided one-half interest in the real property described herein is hereby quieted in this chapter 7 estate for the benefit of the creditors of Hal Taylor. Said real property located in Summit County, State of Utah, is described as follows:

Lot 40, Thaynes Canyon Subdivision, according to the plat thereof or, file and of record in the office of the County Recorder of Summit County, Utah, subject to easements and restrictions of record or enforceable in law and equity.

And, it is further

ORDERED, ADJUDGED AND DECREED, that Stephen W. Rupp, Chapter 7 trustee, is authorized to record appropriate documentation with the Summit County Recorder establishing a constructive and resulting trust in the estate's undivided one-half interest in the above described real property currently titled in the name of Julia W. Taylor, until such time as the claims of this estate a-re satisfied, and it is further,

ORDERED, ADJUDGED AND DECREED, that judgment is hereby granted in favor of the chapter 7 estate, against Julia W. Taylor, for $5,743.50 representing the estate's interest in one-half the value of a 1990 Jeep Wagoneer.

DATED this 8th day of September, 1995.

/S/
JUDITH A. BOULDEN
United States Bankruptcy Judge